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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,969	10/25/2001	Cynthia K. Schilling	10006627-2	1054

7590 02/17/2005

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EXAMINER

JOO, JOSHUA

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,969	Applicant(s) SCHILLING ET AL.	
	Examiner Joshua Joo	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-19 are presented for examination.
2. Claims 1-19 are rejected.

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1-19 of copending Application No. 09/999,582. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 8-14, 17-19 are rejected under 35 U.S.C. 102(b) as being unpatentable by *Waclawsky et al*, US Patent #5,974,457 (*Waclawsky* hereinafter).

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7. As per claims 1, 10, and 19, Wacławsky teaches a method and a monitoring device for the real time monitoring of a network component by collect sets of data over a specified interval of time. Wacławsky's invention comprises of:

a) Executing a first program on at least one portion of said electronic network (Col 7, lines 17-20. The invention monitors network media or some network component over some period.);

b) Receiving first data resulting from the execution of said first program (Col 22-23. The monitoring information is used to build benchmark data sets.);

c) Analyzing said first data to determine if said at least one portion of said network is not operating within a preselected specification (Col 7, lines 22-34. Monitoring information is used to build benchmark data sets. Benchmark data obtained from the current monitor activities determines whether the current monitoring indicates activities normal or abnormal network behavior. Col 7, lines 50-55. Benchmark data is compared using criteria that are in modules.);

d) Receiving second data resulting first the execution of said second program (Col 7, 20-23. Monitoring is done on a specified interval, which is used to build data sets.); and

e) Analyzing said first data and second data to determine the cause of said at least one portion of said network not operating within said preselected specification (Col 7, line 55 – Col 8, line 6. The current monitored data is compared to the prior benchmark to evaluate the network. The logs of information are used to effect network changes since there is some condition in the network that the network needs to be corrected or optimized for.)

8. As per claims 2 and 11, Waclawsky teaches the invention of claims 1 and 10, wherein said executing a first program comprises measuring the latency associated with said at least one portion of said electronic network (Col 8, lines 39-49. Criteria that are used to evaluate whether the system is operating within some bounds or not can be criteria that is generally acceptable criteria for finding known network problems such as delay characteristics.).

9. As per claims 3 and 12, Waclawsky teaches the invention of claims 1 and 10, wherein said at least one portion of said network has a connector associated therewith, said connector storing a management information base, and wherein said executing a first program comprises measuring data stored in said management information base (Col 7, lines 29-35. The benchmark data previously created are used to determine whether the data obtained from the current monitoring indicates normal or abnormal network status. The new benchmark data set may be a combination of old and new data sets, which retain accumulated network behavior over very long intervals.).

10. As per claims 4 and 13, Waclawsky teaches the invention of claims 1 and 10, wherein said executing a first program comprises performing at least two measurements of a parameter of said network, and wherein said first data provides an indication of said network not operating within a preselected specification if the difference of said at least two measurements exceeds a preselected amount (Col 7 lines 56-64. The criteria modules are responsible for evaluating the current monitored data from against the prior benchmark data collected during subsequent intervals such as the intervals of the same hour in the same day of different weeks. The criteria module determines if the current network operating characteristics are outside the bounds of normal behavior.)

11. As per claims 5 and 14, Wacławsky teaches the invention of claims 1 and 10, wherein said first program stores correlations between previous network conditions and previous network problems, and wherein said executing a first program comprises comparing present network conditions to stored network conditions and determining a network problem based at least in part on the comparison (Col 8, lines 31-39. Benchmark data sets are stored to provide a history of network activity, which can be used to determine whether the network exceeds or will exceed some criteria that indicate performance problems. Col 7 lines 56-64. The criteria modules are responsible for evaluating the current monitored data from against the prior benchmark data collected during subsequent intervals. Col 7, lines 61-65. If the network is operating outside the bounds of normal behavior, alerts and logs of information are sent to the expert system.).

12. As per claims 8 and 17, Wacławsky teaches the inventions of claims 1 and 10, and further comprising displaying a graphical user interface representative of said network, said graphical user interface indicating said portion of said network not operating within said preselected application (Col 8, line 63 – Col 8, line 6. The expert system receives logs of information, which indicate information used to correct the network. Col 12, lines 19-43. Expert system outputs information log to a display. A display for the real time intelligent monitoring display is a series of informational windows based on activity reported by the various criteria within the system. Some of the windows can be opened a screen when traffic exists. It displays information about the alert status and categories of alert as seen by the expert system).

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13. As per claims 9 and 18, Waclawsky teaches the method of claims 8 and 17, wherein said graphical user interface further displays information relating to at least one cause of said network not operating within said preselected specification (Col 8, line 63 – Col 8, line 6. The expert system receives logs of information, which indicate information used to correct the network. Col 12, lines 19-43. A display for the real time intelligent monitoring display is a series of informational windows based on activity reported by the various criteria within the system. Some of the windows can open a screen when traffic exists.).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 6-7, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waclawsky, US Patent #5,974,457 and in view of Mayton et al, US Patent #6,763,380 (Mayton hereinafter).

16. As per claims 6 and 15, Waclawsky teaches that the criteria used to evaluate whether the system is operating within bounds consist of criteria that is generally acceptable criteria for find known network problems (Col 8, lines 39-43).

17. Waclawsky does not specifically teach the invention, wherein said executing said first program comprises running at least one trace route routine on said at least one portion of said network, said trace route measuring the latency of said at least one portion of said network.

18. Mayton teaches an invention for tracking network device performance by obtaining performance measurements through testing such as the use of trace routes. A trace route is used to obtain the latency between portions of the network (Col 3, lines 54-65; Col 14, lines 49-59).

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Waclawsky and Mayton because including the use of trace routes to obtain latency in addition to the criteria used to evaluate the performance of the network provides the invention of Waclawsky a specific example of analyzing the network for proper performance, and it provides an effective way to monitor the performance of the network such as detecting timeouts and outages.

20. As per claims 7 and 16, Waclawsky teaches that the criteria modules are responsible for evaluating the current monitored data from against the prior benchmark data collected during subsequent intervals. The criteria module determines if the current network operating characteristics are outside the bounds of normal behavior. The criteria used to evaluate whether the system is operating within bounds consist of criteria that is generally acceptable criteria for find known network problems (Col 7, lines 56-64; Col 8, lines 39-43).

21. Waclawsky does not specifically teach the invention, wherein said executing said first program comprises running a trace route routine at first time and a second time on said at least a portion of said network, said trace route routine measuring the latency of said at least one portion of said network, said first data corresponding to the difference between the latency measured said first time and said second time said trace routine is run.

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22. Mayton teaches an invention for tracking network device performance by obtaining performance measurements through testing such as the use of trace routes. A trace route is used to obtain the latency between portions of the network (Col 3, lines 54-65; Col 14, lines 49-59).

23. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Waclawsky and Mayton because including the use of trace routes to obtain latency in addition to the criteria used to evaluate the performance of the network provides the invention of Waclawsky a specific example of analyzing the network for proper performance, and it provides an effective way to monitor the performance of the network such as detecting timeouts and outages..

Conclusion

24. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Joo whose telephone number is 571 272-3966 and fax number is 571 273-3966. The examiner can normally be reached on Monday to Thursday 8 to 5:30.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on 571 272-3964.

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27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4, 2005

JJ

A handwritten signature in black ink, appearing to read 'JF', is positioned above the printed name.

**JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**